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TRAVERSE CITY, MICHIGAN  
WASHINGTON, D.C.

MICHAEL B. ORTEGA

April 26, 1990

**Via Fax**  
**(312) 886-0747**

Ms. Beth Henning  
Assistant Regional Counsel  
U.S. EPA (5CS-TUB-3)  
230 South Dearborn Street  
Chicago, IL 60604



Re: In the Matter of Albion-Sheridan Township Landfill  
Docket No. VW-90-C-051

Dear Ms. Henning:

This office represents Mr. Richard Remes, Trustee in bankruptcy for Brooks Foundry, Inc. This letter will confirm and expand upon the evidence, arguments and comments made during our conference with U.S. EPA in Chicago on April 23 concerning the Albion-Sheridan Township landfill and U.S. EPA's recent 106 Order relative to that site. Brooks Foundry, Inc. was a listed respondent to that Order.

1. Before the April 23, 1990 conference, we were not aware of all of the relevant facts pertaining to U.S. EPA's 106 Order. In reviewing this matter with the Trustee and looking at the applicable case law, we are firmly convinced that if drums were ever deposited at the landfill by Brooks Foundry, Inc., and we have every reason to believe they were not, they must have been deposited there prior to the commencement of the Chapter 7 bankruptcy on May 22, 1989. Beginning sometime in March 1989, U.S. EPA took control of the foundry property and would not permit the removal of anything from the site. They retained the services of Paladin Security Services in order to ensure that nothing was removed. U.S. EPA left the site in November 1989, and the Trustee has maintained the same security service and personnel from that date to present. The Trustee has not allowed anyone to enter the premises to remove any drums and in fact all drums with any toxic materials in them were removed by U.S. EPA as part of their response effort. Therefore, it is clear that if the drums were placed in the landfill by employees of Brooks Foundry, Inc., it occurred prior to bankruptcy, and in fact prior to U.S. EPA's arrival in March 1989.

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Based upon Section 362 of the Bankruptcy Code (11 USC §362), the commencement of any judicial or administrative action or proceeding against the Debtor, Brooks Foundry, Inc., which could have been brought before the commencement of the case, is automatically stayed. Therefore, the Trustee believes he cannot participate in the response to the Section 106 Order unless and until U.S. EPA obtains relief from the automatic stay and the Trustee is thereafter authorized and directed by the Bankruptcy Court to participate. As we have indicated earlier, we believe that this will take a minimum of 30 days to accomplish due to the fact that notice to all creditors is required. However, based upon our review of the applicable case law and statutes, it does not appear that the Trustee should request such relief from the Bankruptcy Court and that he should instead attempt to conserve the remaining assets in order to help defray U.S. EPA's administrative claim for its response costs related to the prior removal of drums from the Debtor's foundry site.

2. The Trustee has no evidence that any barrels or drums were ever delivered by Brooks Foundry, Inc. to the Albion-Sheridan Township landfill. The administrative record contains no such evidence beyond a February 8 (February 6?) 1990 memo by you concerning a February 1, 1990 contact you had with Mr. Arlow Wilkinson. The memo appears to summarize Mr. Wilkinson's statements during the telephone conversation to the effect that Brooks Foundry may have disposed of "foundry sand; some 55 gal. drums" at the landfill. No further details are contained in the memo or elsewhere in the administrative record.

During our April 23 conference, we specifically requested information upon which U.S. EPA has based its claim that Brooks Foundry, Inc. is in any way connected to the 16 drums currently at the landfill, which drums form the basis of this 106 Order. (Mr. El-Zein told us there are 27 total drums; 11 are empty, 16 have some material in them.) In response to this request, you produced two Contact Reports dated March 1, 1988 and May 5, 1988, apparently produced by Brian O'Neal. Copies are attached to this letter.

The March 1, 1988 Contact Report purports to memorialize a telephone discussion between Mr. O'Neal and Ted Havens of the Calhoun County Health Department in Battle Creek. The sole reference to Brooks Foundry, Inc. is "Brooks Foundry probably contributed (type of waste unknown)."

The May 5, 1988 Contact Report purports to memorialize a telephone conversation between Mr. O'Neal and Mr. Wilkinson. The sole reference to Brooks Foundry, Inc. is the inclusion of "Brooks" among thirteen companies which, according to Mr. O'Neal, Mr. Wilkinson "confirmed" as companies which "had brought garbage and waste" to the landfill.



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You confirmed at the April 23 conference that U.S. EPA is in possession of no further evidence or information of any kind connecting Brooks Foundry, Inc. to the conditions forming the basis of the 106 Order.

A 106 Order poses a significant burden and threat to its recipient, and should not be issued in the absence of a meaningful and substantial factual basis. U.S. EPA has no such basis for issuing this 106 Order to Brooks Foundry, Inc. The references to Brooks Foundry, Inc. in the administrative record, and in the Contact Reports supplied at the April 23 conference, merely reflect unsworn, unsupported and vague hearsay statements by Mr. Wilkinson and Mr. Havens. While Mr. Wilkinson might be expected to have some information as to the landfill's operations due to his apparent position as operator from 1967 or 1968 to some unspecified date, the statement by Mr. Havens appears to be pure unsupported speculation.

In short, U.S. EPA has simply failed to offer any connection between Brooks Foundry, Inc. and the drums or barrels which form the basis of this 106 Order.

3. At the April 23 conference Mr. El-Zein confirmed that the Technical Assistance Team tested some of the drums for RCRA hazardous waste characteristics. He said some of the drums tested negative in this regard, but he was unable to identify which ones.

Moreover, while the January 1990 Removal Action Plan contains a statement in Section 2.1 that the landfill accepted approximately 1,975 cubic yards of metallic sludge and 35,000 drums of paint wastes and spent solvents, Mr. El-Zein could offer no support for this statement.

4. At the April 23 conference you and Mr. El-Zein said the 106 Order is intended to cover the investigation and cleaning of two underground storage tanks and one aboveground storage tank at the landfill. However, there is no evidence in the administrative record, or otherwise presented by U.S. EPA at the conference, that the tanks contained or contain anything other than gasoline, which we speculate may have been used to fuel heavy equipment used at the landfill by its operators. There is no evidence or suggestion that these tanks were ever used for any other purpose, and certainly no indication they were ever used for any purpose by Brooks Foundry, Inc. (or any of the other recipients of the 106 Order). As a result, any references to these tanks in the 106 Order or in the statements by yourself or Mr. El-Zein, are unsupported and misplaced.

5. It was brought to your attention at the April 23 conference that the MDNR's file contains a May 1985 memo from Kooistra to Hogarth reflecting an inspection of this landfill, and the conclusion that there is no risk of



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direct contact. Nor is there any mention of any drums or barrels at the site.

You were also advised that in 1988 Hayes-Albion inspected the site and found approximately six drums.

Thus, the available information strongly indicates that at least the majority of the drums which form the basis of U.S. EPA's 106 Order were brought to the site after 1988. No such deliveries could have been made by Brooks Foundry, Inc., which filed for Chapter 7 Bankruptcy on May 22, 1989. Indeed, as noted in paragraph 1 above, sometime in March 1989 U.S. EPA took physical control of Brooks Foundry, Inc.

6. The portions of the 106 Order requiring the installation of fences and gates to secure the property, and Mr. El-Zein's description of this requirement at the April 23, 1990 conference are overbroad and unnecessary. It appears to be U.S. EPA's desire that access to the entire landfill be restricted. However, far less extensive and expensive measures could be taken to secure the barrels which form the basis of the Order. It appears U.S. EPA is attempting to have the recipients of this 106 Order finance an effort to secure the entire property for the benefit of U.S. EPA or others who may be involved in later investigations and remedial actions beyond those concerning the barrels which form the basis of the current 106 Order. This is inappropriate and unfair.

7. Please advise us as soon as possible as to U.S. EPA's decision on the effective date of the 106 Order. At the April 23 conference, the recipients of the 106 Order requested a 30 day delay in establishing the effective date of the Order.

Sincerely,

Michael B. Ortega

Robert E. L. Wright

MBO/sr  
Enclosure  
c: Mr. Jason El-Zein

# CONTACT REPORT

Reference:

☒ Tt Contract K-3621-38

☐ Tt Proposal No. \_\_\_\_\_

☐ Other \_\_\_\_\_

Contact was ☒ Phone 5/5/88 10:40  
Date CLM

☐ Personal \_\_\_\_\_  
date

location

Bellevue Office

CONTACTED BY: Brian O'Neal

PERSON(S) CONTACTED: Arlow Wilkinson

ORGANIZATION: Private Citizen

ADDRESS/PHONE: 1-517-629-4492

SUBJECT: Albion-Sheridan Township Landfill

## DISCUSSION:

Q (Brian): Who lived in the Praeter house before the Praeters?

A (Arlow): I can't remember the names, but before Mr. Stenick sold the property to Mr. Praeter, he rented it to several people.

Q: How far north did the landfill operations extend?

A: Well, about  $\frac{1}{2}$  way up the northern lot, but only on the west side of the lot.

Q: What was dumped up there?

A: Just garbage, same as the rest of the place.

Q: Where was the northern section of the landfill accessed from? Michigan Ave or Erie Rd.?

A: We only used Erie Road.

Q: When did the landfill begin operation?

A: I started working there in 1967 or 1968.

Q: What was the typical landfilling process?

A: A hole was dug with a bulldozer, with the dirt piled on the ~~left~~ edge of the hole. The hole was typically between 5 & 30 ft deep. Garbage was pushed into the hole and covered "daily" with dirt.

Further Action:

Outing: For Information  
For Action

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# CONTACT REPORT

Reference:

☐ Tt Contract No. 3621-38

☐ Tt Proposal No. \_\_\_\_\_

☐ Other \_\_\_\_\_

Bellevue Office

Contact was

☐ Phone 5/5/88 10:40  
date time

☐ Personal \_\_\_\_\_  
date

location

CONTACTED BY:

B. Oles

PERSON(S) CONTACTED:

A. Wilkinson

ORGANIZATION:

ADDRESS/PHONE:

SUBJECT:

Albion-Sheridan Landfill

DISCUSSION:

Q: Did you charge customers by the load or what?

A: If a guy brought a pickup of household garbage to dump, we usually didn't charge him unless it was a big load. We also charge for dumping refrigerators, stoves, etc. Contract haulers were billed monthly (companies also).

Q: What was the property used for prior to a landfill?

A: As far as I know, the property was idle except for the small gravel pit Mr. Sterick ran in the south part of the property. No trash ~~was~~ ever put in the gravel pit.

Q: Who hauled waste the most?

A: Sheffield hauled the most. He was the city's hauler.

Q: The FIT Report said that thousands of drums were buried in the landfill; is this true?

A: No way there was that many drums. There was a few now or then but nowhere near that many.

→ Arlow confirmed that the following companies had brought garbage & waste to the SLF: Brooks, Hayes-Albion, Albion Sanitary Service, McGraw Edison, Seiler Trucking Service, Refuse Service Inc., City Disposal Co., Scotts Disposal, Union Steel Products, Ideal Castings, Albion Motor Products, Decker Mfg, and Steel Products CO.

Outgoing: For Information  
For Action

page 2 of 2



## CONTACT REPORT

Reference: ☒ Tt Contract No. TC-3621-35☐ Tt Proposal No. \_\_\_\_\_☐ Other \_\_\_\_\_Bellevue OfficeContact was ☐ Phone \_\_\_\_\_ date \_\_\_\_\_ time \_\_\_\_\_☒ Personal 3/1/88 3:00pm  
date  
Calhoun County Health  
location Dr.CONTACTED BY: Brian O'NealPERSON(S) CONTACTED: TED HAVENSORGANIZATION: Calhoun County Health Dept. - B.ADDRESS/PHONE: Battle Creek, MISUBJECT: Albion Landfill

## DISCUSSION:

Discussed past history of landfill and my actions the Health Department may have taken concerning activities at the site. Mr. Havens stated that prior to the site's use to Mr. Stenick and subsequent use as a landfill, the site was a dump for local residents and businesses. Also, Mr. Havens stated that until the dump/landfill closed, it was the main (if not only) disposal location for municipal & industrial waste in the "greater Albion" area. Mr. Havens recalled that several contract waste haulers including M&R, Albion Sanitary Service, Sheffield's and possibly Waste Mgmt. out of Battle Creek had used the Albion site.

Concerning specific industries who used the landfill, Mr. Havens stated the following:

- Seiler Trucking had disposed of liquid wastes near the north side of landfill. SEILER TRUCKING REMOVED OIL & GAS WASTES IN THE AREA
- Brooks Foundry probably contributed (type of waste unknown)
- Scott's Disposal Co. leased part of North edge of landfill as a transfer station.

## Further Action:

Mr. Havens suggested talking to Albion City Mgr. - George Kellb.

Routing: For Information  
For Action

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WASHINGTON, D.C.

MICHAEL B. ORTEGA

April 4, 1990

Beth Henning, Esq.  
Assistant Regional Counsel  
U.S. EPA (5CS-TUB-3)  
230 South Dearborn Street  
Chicago, Illinois 60604

Re: Albion-Sheridan Township Landfill, Albion, Michigan

Dear Beth:

Confirming our April 3 telephone conversation, this firm represents Mr. Richard Remes, Trustee in Bankruptcy for Brooks Foundry, Inc., which is listed as a respondent to a Section 106 Administrative Order (Docket No. VW-90-C-051), dated March 19, 1990 (the cover letter is dated March 21).

I understand at least one other respondent has requested a conference with the EPA. Further, I understand the conference is tentatively being scheduled for April 17 in Chicago. In the meantime, the administrative record is to be transferred from Chicago to a repository closer to the site in question, the Albion-Sheridan Township Landfill in Albion, Michigan.

Please accept this letter as a request for a conference on behalf of Mr. Remes, as Trustee in Bankruptcy for Brooks Foundry, Inc. I look forward to discussing this matter with you in greater detail, either at the April 17 conference, or otherwise. If you have any questions, please call.

Sincerely,

MILLER, CANFIELD, PADDOCK AND STONE

Michael B. Ortega

MBO/sr

c: Jason El-Zein

On-Scene Coordinator, U.S. EPA (5HSGI)

